Filed 3/2/10 In re H.M. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re H.M., a Person Coming Under the Juvenile Court Law.	B215186 (Los Angeles County Super. Ct. No. CK74835)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. IZABELLA R., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Sherri Sobel, Referee. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

James M. Owens, Assistant County Counsel, and Melinda S. White-Svec, Deputy County Counsel, for Respondent.

Mother Izabella R. appeals from the juvenile court's finding that her infant son, H., is subject to dependency jurisdiction under Welfare and Institutions Code section 300, subdivision (b).[1] She contends that although H. suffered a subdural hematoma while under her and the father's care, there was insufficient evidence to prove that the injury was caused by their neglect.[2] We disagree, and affirm the juvenile court's order.

BACKGROUND

On October 1, 2008, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition in the juvenile court alleging, inter alia, that H. was subject to jurisdiction under section 300, subdivision (b), in that he was at risk of harm because he had suffered a subdural hematoma consistent with non-accidental trauma and his parents could provide no explanation for the injury.[3] At the jurisdiction hearing, Mother signed a "Waiver of Rights" and agreed to submit the issue of jurisdiction on the basis of the DCFS reports. Those reports contained the following evidence.

On September 27, 2008, H. was airlifted to Children's Hospital Los Angeles after Mother called "911" and reported him stiff and unresponsive. He had a seizure at home and again during the air transport. A medical examination at the

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[1] All undesignated section references are to the Welfare and Institutions Code. Section 300, subdivision (b), provides in relevant part that a child is within the jurisdiction of the juvenile court if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child."

[2] Father is not a party to this appeal.

[3] Based on an erroneous initial suspicion that H. had suffered a rib fracture, the petition also alleged allegations under section 300, subdivisions (a), (e), and (i). These allegations were later dismissed and are not at issue on appeal.

hospital revealed that he was suffering from an acute right frontal subdural hematoma. He had no other bruises or signs of injury. According to the treating physician, Dr. Sabrina Derrington, the type of bleeding H. experienced typically results from trauma caused by a severe fall or being shaken. Similarly, the treating neurosurgeon, Dr. Lawrence Davidson, stated that the injury was caused by some form of head trauma.

Mother suggested to Dr. Derrington that H.'s condition was the result of flu-like symptoms in the days preceding his transportation, or the result of his high blood pressure. Dr. Derrington believed that it was unlikely that H.'s condition was caused by any medical condition.

An eye examination performed the day after H. was admitted to the hospital found nothing unusual, and the reporting physician described H. as having "subdural hematoma and suspicion for non-accidental trauma without evidence of retinal hemorrhages in both eyes." Dr. Derrington later told a DCFS investigator: "The parents' history was not straightforward and was inconsistent with the child's injury. That injury required some pretty significant force where there is acceleration and deceleration." Dr. Derrington also noted that although there was no evidence of retinal hemorrhaging, the absence of that condition did not mean that H. was not shaken.

An attending physician, Dr. Jeffery Upperman, recommended a "hematologic consultation," and noted that "[p]ossible not external trauma is the mechanism for this injury." However, the hematology examination recommended by Dr. Upperman later showed that H. suffered from no blood disorder that might have caused the subdural hematoma.

When the assigned social worker interviewed Mother, Mother described her treatment of H.'s flu-like symptoms, and his later suffering a seizure. Mother said

that she called 911 and did as instructed – placing H. on his back – and observed him shaking as if having a second seizure. She said that H. was always in her care, that she did not observe him fall or strike his head, and did not know what could have caused his injury. She denied shaking or striking H.. Father, too, said that he had not observed his son falling or striking his head, and stated that he would never harm his son. The maternal grandfather, who was present when Mother called 911, confirmed the parents' version of events.

Based on Dr. Derrington and Dr. Davidson's opinions and the parents' inability to explain how H. might have suffered a subdural hematoma, the social worker concluded that the injury was the result of non-accidental trauma, and took H. into protective custody. DCFS later filed the instant petition. After spending several days in the hospital, H. was released to the custody of his maternal aunt and uncle on October 3, 2008.

After being confronted by the parents, H.'s regular pediatrician, Dr. Aliav, was concerned about a diagnosis of Shaken Baby Syndrome as an explanation for H.'s condition. On the other hand, Michael Jordan, a nurse who ran the trauma program at Children's Hospital with Dr. Upperman, stated that H.'s hemorrhage was "not a spontaneous bleed," but rather the result of "an external force of acceleration and deceleration."

The social worker concluded that H.'s condition resulted from a "shaking like trauma," and that although the parents clearly loved H. and H. was clearly attached to them, the family was in need of support and supervision.

Following submission of the case, the juvenile court stated that it had read and considered the DCFS reports, and sustained the allegation of the petition under section 300, subdivision (b). The court concluded: "The child was medically examined and found to be suffering from a detrimental condition: acute right

frontal subdural hematoma. The parents were not able to provide an explanation. It is consistent with nonaccidental trauma." The court placed H. at home with the parents, and ordered, among other things, that the parents attend parenting classes and individual counseling and that H. be examined at Children's Hospital every two months until the medical team decided otherwise.

DISCUSSION

Mother contends that substantial evidence does not support the juvenile court's sustaining the section 300, subdivision (b) allegation. We disagree.

Section 355.1, subdivision (a), provides: "Where the court finds, based upon competent professional evidence, that an injury, injuries, or detrimental condition sustained by a minor is of a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omissions of either parent, the guardian, or other person who has the care or custody of the minor, that finding shall be prima facie evidence that the minor is a person described by subdivision (a), (b), or (d) of Section 300." This provision "constitutes a presumption affecting the burden of producing evidence." (§ 355.1, subd. (c).) It does not affect the burden of proof. (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1041.)

Here, it is undisputed that "competent professional evidence" established that H.'s subdural hematoma would not ordinarily "be sustained except as the result of the unreasonable or neglectful acts or omissions of either parent." (§ 355.1, subd. (a).) Dr. Derrington, Dr. Davidson, and nurse Jordan all opined, in substance, that the condition was likely caused by some type of trauma and was inconsistent with an accident. Under section 355.1, subdivision (a), this showing constituted a prima facie evidence that H. was subject to jurisdiction under section 300, subdivision (b), which applies when the child has "suffered, or there is a

substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child."

Mother contends that evidence in the DCFS reports rebutted the presumption of section 355.1, subdivision (a). She cites the following evidence: (1) she and father denied harming or striking H., were clearly bonded with H., and acted appropriately in treating him before his arrival at the hospital and in interacting with him after his arrival; (2) H. did not have a skull fracture, did not have retinal hemorrhaging, and showed no other signs of abuse; (3) none of the examining physicians conclusively established a cause of the injury, and one entry by Dr. Upperman stated that "[p]ossible not external trauma is the mechanism for this injury."

None of this evidence, however, showed that H. did not suffer the subdural hematoma as the result of "the failure or inability of his or her parent . . . to adequately supervise or protect the child." (§ 300, subd. (b).) H. was a one-year-old infant. Although the parents denied harming H. and clearly loved him, they could provide no explanation for his condition suggesting an innocent medical cause. That H. did not display greater injuries – a skull fracture, retinal hemorrhaging, past injuries – did not demonstrate that the subdural hematoma was caused by non-accidental means. To the extent Dr. Upperman referred to "[p]ossible not external trauma," he was referring to the possibility that a blood disorder caused the condition. He recommended a "hematologic consultation." That consultation later showed that H. suffered from no blood disorder that might have caused the subdural hematoma. Thus, Dr. Upperman's isolated entry did not rebut the inference that the hematoma was caused by non-accidental trauma. Finally, although none of the treating physicians could say precisely how the injury

occurred, Dr. Derrington stated that the type of bleeding H. experienced typically results from trauma caused by a severe fall or being shaken, and that it was unlikely that H.'s condition was caused by any medical condition. Dr. Derrington also stated that "[t]he parents' history was not straightforward and was inconsistent with the child's injury. That injury required some pretty significant force where there is acceleration and deceleration." Similarly, Dr. Davidson, stated that the injury was caused by some form of head trauma. Thus, none of the evidence on which Mother relies rebutted the presumption of section 355.1, subdivision (a).

Mother's reliance on *In re Esmeralda B., supra,* 11 Cal.App.4th 1036, is misplaced. There, the presumption of section 355.1, subdivision (a), did not apply, because no competent medical evidence was introduced to show that the condition of the eight-year-old child (a torn hymen), even if evidence of sexual molestation, was of a nature as would ordinarily not be sustained except as the result of parental neglect. (*Id.* at pp. 1040-1041.) Moreover, even if the presumption did apply, it was rebutted by DCFS's own evidence, which showed that the child consistently denied having been sexually abused, that she provided a viable explanation for the injury (falling off her bicycle), and that the social worker believed that there was nothing the parents should have done to prevent the injury. (*Id.* at pp. 1040-1041.)

The instant case is clearly distinguishable. As we have explained, here the presumption of section 355.1, subdivision (a), applied, and there was no evidence rebutting it. Thus, the presumption is alone sufficient to support the juvenile court's jurisdictional finding under section 300, subdivision (b).

In any event, even without the presumption, substantial evidence supports the judgment. As we have explained, H. was one year old. He suffered a serious injury – an acute right frontal subdural hematoma – while under his parents' care. The parents could offer no viable explanation how the injury occurred. Two

physicians and a nurse believed that the injury was caused by some type of non-accidental trauma. From this evidence, the juvenile court could infer that, within the meaning of section 300, subdivision (b), one-year-old H. suffered, or was at substantial risk of suffering, serious physical harm as a result of the failure or inability of mother and father to adequately supervise or protect him.

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.